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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,073	02/24/2004	Michael T. Carley	16497.1.1.2.1	9513
57360 7590 08/13/2009 WORKMAN NYDEGGER 1000 EAGLE GATE TOWER, 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111				
EXAMINER TYSON, MELANIE RUANO				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
08/13/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/787,073

Applicant(s)

CARLEY ET AL.

Examiner

MELANIE TYSON

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 3/20/09, 5/22/09, 7/23/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is in response to the applicant's amendment received 07 May 2009.

Terminal Disclaimer

The terminal disclaimer filed on 07 May 2009 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 7,211,101 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 17 recite "at least one first primary tine" and "at least one second primary tine." Claims 4, 7, and 9 recite "the first primary tine" and/or "the second primary tine." These limitations are confusing in that it is unclear as to whether or not the applicant regards more than one first primary tine and more than one second primary tine as part of the invention. Claim 18 recites "wherein at least one of said first and second primary tines" and claim 19 recites "wherein at least one of said primary tines." It is unclear as to whether this includes at least one of the at least one first primary tine and at least one of the second primary tine, or at least one of the first and second primary tines combined. Claims 20-23 recite "the primary tines" and "the primary tine." It is unclear as to whether this limitation includes either all of the first and

second primary tines combined, or simply all of the first primary tines or all of the second primary tines. It is required the applicant make the language of the independent and dependent claims consistent such that it the subject matter which the applicant regards as the invention is clear.

Allowable Subject Matter

Claims 1-23 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose or suggest, in combination with other limitations in the claims, a generally annular-shaped body defining a plane comprising alternating first curved regions defining an inner periphery of the body and a second curved regions defining an outer periphery of the body, at least one primary tine extending from a first curved region, and at least a second primary tine extending from another first curved region, wherein the first and second primary tines are deflectable out of the plane when the body is moved towards the transverse configuration, are substantially parallel to each other, and are offset and substantially parallel to an axis of symmetry of the looped element from which they extend.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE TYSON whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Friday 7-7 (max flex).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson /M. T./
Examiner, Art Unit 3773
August 10, 2009

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773